Message

From: Deegan, Dave [Deegan.Dave@epa.gov]
Sent: 1/13/2021 9:56:47 PM
To: R1 Executives All [R1ExecutivesALL@epa.gov]
Subject: FW: Afternoon News Clips, January 13, 2021

From: Daguillard, Robert
Sent: Wednesday, January 13, 2021 4:56:43 PM (UTC-05:00) Eastern Time (US & Canada)
To: AO OPA OMR CLIPS
Subject: Afternoon News Clips, January 13, 2021

Gold King Mine

Associated Press: Navajo Nation, New Mexico reach settlements over mine spill

Chemical Safety

Politico: Trump's EPA team overrules career scientists on toxic chemical **(Please note the apparently contradictory statements about the agency's response to press inquiries)**

National Law Review: Asbestos Reporting and Regulation to be a TSCA Focal Point for EPA in 2021

Enforcement:

KSL: What a Biden presidency might mean for outdoors, environment issues in Utah?

Greenhouse Gas Emissions

Politico: Trump's EPA launches surprise attack on Biden's climate rules

WSJ: EPA Raises Barriers to Climate-Change Rules

Water Safety:

Inside EPA: Democratic States, Environmentalists Oppose EPA CWA Permitting Guide

Inside EPA: Industries Back EPA Groundwater Permitting Guide But Seek More Clarity

MLIVE: Judge plans to rule on Flint water crisis settlement in next 8 days

Other:

Politico: Around the Agencies, January 13

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Associated Press: Navajo Nation, New Mexico reach settlements over mine spill
https://www.washingtonpost.com/politics/navajo-nation-new-mexico-reach-settlements-over-mine-spill/2021/01/13/226287a0-55d9-11eb-acc5-92d2819a1ccb_story.html

By Susan Montoya Bryan | AP

Jan. 13, 2021 at 2:54 p.m. EST

ALBUQUERQUE, N.M. — The Navajo Nation and the state of New Mexico have reached multimillion-dollar settlements with mining companies to resolve claims stemming from a 2015 spill that resulted in rivers in three

Western states being fouled with a bright-yellow plume of arsenic, lead and other heavy metals, officials confirmed Wednesday.

Under the settlement with the Navajo Nation, Sunnyside Gold Corp. — a subsidiary of Canada's Kinross Gold — will pay the tribe $10 million. New Mexico's agreement includes a $10 million payment for lost tax revenue and environmental response costs as well as $1 million for injuries to the state's natural resources.

The spill released 3 million gallons (11 million liters) of wastewater from the inactive Gold King Mine in southwestern Colorado. A crew hired by the U.S. Environmental Protection Agency triggered the spill while trying to excavate the mine opening in preparation for a possible cleanup.

The wastewater made its way into the Animas River and eventually down to the San Juan River, setting off a major response by government agencies, the tribe and private groups.

Water utilities were forced to shut down intake valves, and farmers stopped drawing from the rivers as the plume moved downstream.

The tribe said the toxic water coursed through 200 miles (322 kilometers) of river on Navajo lands.

"The Gold King Mine blowout damaged entire communities and ecosystems in the Navajo Nation," Navajo Nation President Jonathan Nez said in a statement announcing the settlement. "We pledged to hold those who caused or contributed to the blowout responsible, and this settlement is just the beginning."

The tribe's claims against the EPA and its contractors remain pending. About 300 individual tribal members also have claims pending as part of a separate lawsuit.

Nez added: "It is time that the United States fulfills its promise to the Navajo Nation and provides the relief needed for the suffering it has caused the Navajo Nation and its people."

The EPA under the Obama administration had claimed that water quality quickly returned to pre-spill levels. But New Mexico officials, tribal leaders and others voiced ongoing concerns about heavy metals collecting in the sediment and getting stirred up each time rain or snowmelt results in runoff.

State officials said the Animas Valley is now well within irrigation standards. But farmers continue to see lower sales because of the stigma left behind by the spill.

New Mexico Attorney General Hector Balderas, who has been shepherding the state's legal claims, said in a statement that he was pleased to settle this part of the case and that it marks a step toward holding polluters accountable.

"It is now the U.S. EPA who must step up and take responsibility," Balderas said. "I will continue to fight to protect our most vulnerable communities and pristine environment, especially from the federal government, which should be held responsible to these communities too."

In August, the U.S. government settled a lawsuit brought by the state of Utah for a fraction of what that state was initially seeking in damages.

In that case, the EPA agreed to fund $3 million in Utah clean water projects and spend $220 million of its own money to clean up abandoned mine sites in Colorado and Utah.

After the spill, the EPA designated the Gold King and 47 other mining sites in the area a Superfund cleanup district. The agency is still reviewing options for a broader cleanup.

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Inside EPA: Democratic States, Environmentalists Oppose EPA CWA Permitting Guide
https://insideepa.com/daily-news/democratic-states-environmentalists-oppose-epa-cwa-permitting-guide
January 13, 2021

Democratic state attorneys general (AGs) and environmentalists are calling on EPA to withdraw its guidance implementing a landmark Supreme Court ruling on when pollutants that travel through groundwater to surface waters require a Clean Water Act (CWA) permit, calling the proposed guidance illegal on several fronts.

The National Ground Water Association (NGWA), which represents groundwater professionals working for private industry, the consulting community, academic institutions and local, state and federal government, does not go as far as calling for EPA to scrap the guidance but still says the document falls short of what is needed. And NGWA objects to the guidance's use of permitting factors beyond the high court's ruling.

The Supreme Court last year in County of Maui v. Hawaii Wildlife Fund outlined seven factors for permitting authorities to consider in determining whether pollutants that reach surface waters after traveling through groundwater are a "functional equivalent" to a direct discharge and therefore require a National Pollutant Discharge Elimination System (NPDES) permit.

Those factors are transit time, distance traveled, the nature of the material through which the pollutant travels, the extent to which the pollutant is diluted or chemically changed as it travels, the amount of pollutant entering the navigable waters relative to the amount of the pollutant that leaves the point source, the manner by or area in which the pollutant enters the navigable waters, and the degree to which the pollution at that point has maintained its specific identity.

EPA in December proposed guidance to add an additional factor of the design and performance of the system or facility from which the pollutant is released, an approach supported by numerous industry groups. The agency took comment on the draft guidance until Jan. 11 and then sent a final guidance for White House review Jan. 12, and might try to issue the final version before President Donald Trump leaves office.

Democratic AGs from 11 states and the District of Columbia say in Jan. 11 comments the additional factor "contravenes the County of Maui decision and would be harmful as a policy matter." They say this factor "is unlawful and should be abandoned." The states signing on to the comments are Maryland, California, Connecticut, Illinois, Maine, Massachusetts, Michigan, New Mexico, Oregon, Rhode Island, and Vermont.

The additional factor concerns circumstances antecedent to the point of discharge and such circumstances are irrelevant to whether that discharge is "functionally equivalent" to a direct discharge, a point that is confirmed by the factors the Supreme Court did list in the Maui ruling, the AGs say.

While it may be true, as a factual matter, that a particular facility is designed to direct the pollutant in a manner that increases the time it takes for pollutants to reach navigable waters, or the distance the pollutants travel to reach such waters, "there is no need to consider the facility's design as a separate factor," the AGs say. "Considering the facility's design in its own right, on the ground that it prolongs the time or the distance of travel, would be double-counting and would stack the deck against functional equivalence," they add.

The additional factor that EPA proposes would also be harmful as a matter of policy for two reasons, the AGs say. First, it would give polluters a new, yet meritless, way to argue to regulators or in court that their discharges fall outside the CWA's prohibition on unpermitted discharges. For example, an indirect discharger would be able to argue that because it treats its effluent before discharging it into groundwater, the discharge is not the functional equivalent of a direct discharge and thus is not regulated by the CWA.

"These arguments would complicate, confuse, and delay permitting processes and decisions. They would do the same for judicial proceedings, including proceedings that involve unpermitted facilities. And they would do so even

though this additional factor does not itself inform the functional equivalence analysis directed by County of Maui, as explained above," the AGs argue.

Second, the additional factor would give polluters an incentive to avoid regulation simply by relocating discharge pipes from navigable waters to groundwater, which is the type of strategic behavior that troubled the Supreme Court in Maui, the AGs say. The environmental benefits of treatment alone are no greater for a facility that discharges to groundwater than one that discharges directly into a navigable river, "so it is illogical to consider the fact of treatment differently" in these scenarios, the AGs say.

"In sum, if EPA finalizes the Draft Guidance, it should omit the factor that it proposes to add to those already listed in the County of Maui decision," the AGs say.

Environmentalists' Criticisms

The Center for Biological Diversity (CBD) in Jan. 11 comments says "EPA must abandon the guidance immediately" because it misinterprets Supreme Court precedent, ignores the plain text of the CWA, and includes agency decision making that can only be legally accomplished through notice and comment rulemaking under the Administrative Procedure Act (APA).

"If, however, in the waning hours of the Trump Administration, EPA decides to recklessly continue forward with finalizing the Draft Guidance, it cannot do so without first completing its Section 7 consultation obligations under the" Endangered Species Act (ESA), CBD says.

The draft guidance tries to recast the high court's "decision in Maui, as well as the entire structure of the CWA, as narrowly as possible -- far narrower in fact than the CWA allows -- and to characterize entry into the NPDES permitting program by point sources that discharge through groundwaters to surface waters as merely voluntary." CBD says.

The group calls this a "catch me if you can" approach to CWA permitting and says the "system design and performance" factor creates an additional loophole around the NPDES permitting program. The loophole ignores pollutant fate and transportation data and will have the effect of excusing notoriously polluting facilities such as coal ash dumps and concentrated animal feeding operations from having to seek NPDES permits for their discharges through groundwater into surface waters, CBD says.

"But even more fundamentally, this loophole attempts to unlawfully ascribe polluter intent to the CWA's existing, statutorily-based strict liability scheme. This is plainly unlawful," CBD says.

Additionally, CBD says the draft guidance is not only substantively unlawful but also procedurally unlawful because in creating a new significant factor not previously identified by the Supreme Court, EPA is effectuating a change in the law entirely outside of the rulemaking process required by the APA.

And CBD says that because the guidance is discretionary, EPA is required to conduct ESA section 7 consultations because the draft guidance "will almost certainly exceed the 'may affect' triggering threshold of the ESA."

Insufficient Guidance

NGWA says in its Jan. 11 comments that as a statement of policy, the guide falls short of providing focused advice to states, industries that generate point source pollutants that may be discharged to groundwater and travel to waters of the United States, and consultants who may assist states and industry in addressing this pollution.

The guidance provides no useful direction to potential dischargers or to state regulators on how to evaluate their individual sites and implement consistent decisions that are protective of the environment and aligned with the intent of the guidance, NGWA says. The group adds that decisions about applicability of the Supreme Court

decision should be based on the pollutants of the wastewaters involved and the science and engineering principles for pollutant fate and transport applied to individual sites, regardless of the facility type.

The "design and performance of the facility or system" should not be considered in determining functional equivalent but instead NPDES regulatory decisions should start with pollutant composition and volume and then be evaluated based on the seven factors the Supreme Court specified, NGWA says. "An array of specific sound scientific and engineering protocols is available to perform determinations of each of these [seven] factors."

"Broadly accepted sound science guidance for making determinations of a point source pollutant discharge to groundwater reaching waters of the United States should be developed, building on current knowledge, to enable potential dischargers and the regulatory authorities to decide with confidence whether a permit is needed in each case," NGWA says. "Well-developed and accepted technical guidance will be an important undertaking that should track with states' technical groundwater requirements to limit burdensome regulatory process and permitting mandates." -- Lara Beaven (lbeaven@iwpnews.com)

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Inside EPA: Industries Back EPA Groundwater Permitting Guide But Seek More Clarity
https://insideepa.com/daily-news/industries-back-epa-groundwater-permitting-guide-seek-more-clarity
January 13, 2021

Industry groups are generally supporting EPA's proposed guidance on implementing a landmark Supreme Court ruling that outlined a seven-factor test for determining when pollutants that travel through groundwater require a Clean Water Act (CWA) permit, but they are urging the agency to provide additional guidance on permit issuance.

"We support the Draft Guidance, and we recommend that EPA issue it in final form" after considering comments, the Federal StormWater Association (FSWA), a coalition of industrial, municipal, and construction-related entities, says in Jan. 11 comments.

But FSWA says it is also important for EPA to consider issuing guidance on the related and "just as important" issues of what information must be provided in a permit application subject to the Supreme Court's "functionally equivalent" test and how the permitting authority should determine effluent limits and other requirements that must be included in a National Pollutant Discharge Elimination System (NPDES) permit.

"Neither of those issues is covered in the Draft Guidance, but they both need to be addressed, and that needs to happen soon" because the operators of the relevant facilities need to know how to apply for an NPDES permit, and the states and EPA regions that will issue the permits need to know what those NPDES permits should look like," FWSA says. Other stakeholders, as well, deserve to know how EPA and the states will approach these issues, the coalition adds.

The Supreme Court last year in County of Maui v. Hawaii Wildlife Fund outlined seven factors for permitting authorities to consider in determining whether pollutants that reach surface waters after traveling through groundwater are a "functional equivalent" to a direct discharge and therefore require an NPDES permit.

Those factors are transit time, distance traveled, the nature of the material through which the pollutant travels, the extent to which the pollutant is diluted or chemically changed as it travels, the amount of pollutant entering the navigable waters relative to the amount of the pollutant that leaves the point source, the manner by or area in which the pollutant enters the navigable waters, and the degree to which the pollution at that point has maintained its specific identity.

EPA said its December proposed guidance "places the functional equivalent analysis into context within the existing NDPES permitting framework and identifies an additional factor for the regulated community and permitting authorities to consider when evaluating whether and how to perform a 'functional equivalent' analysis."

The additional factor is the design and performance of the system or facility from which the pollutant is released, which industry groups strongly support but environmental groups and Democratic state attorneys general claim is illegal. The agency took comment on the draft guidance until Jan. 11 and then sent a final guidance for White House review Jan. 12, and could attempt to issue the final version before President Donald Trump leaves office.

Including Additional Factor

FSWA supports EPA's inclusion of the additional factor in the guidance, saying consideration of design and performance of the system would assist the permitting authority in assessing the other factors that the Supreme Court said were relevant to a "functional equivalent" determination.

Unintentional leaks or incursions of pollutants into groundwater that may eventually reach surface waters should not be deemed to meet the functional equivalent test because there is no possible way for the system operator to apply for a permit in advance of the unplanned release, and it is hard to imagine how the permit requirements could be applied in that instance, FSWA says.

FSWA also urges EPA to read the Maui ruling in concert with the Supreme Court's handling of another similar case, StarLink Logistics, Inc. v. ACC, LLC, et al., where StarLink claimed ACC was illegally discharging pollutants from a Tennessee landfill without a NPDES permit and that the facts in its case clearly fit the high court's functional equivalent test. But the high court denied StarLink's petition for certiorari. "While no clear message can be drawn from summary action by the Supreme Court, one might infer that these facts did not meet the Court's new 'functional equivalent' test; and that no NPDES permit was required. That outcome should also help to inform EPA's Draft Guidance," FSWA says.

FSWA also urges EPA to consider addressing procedural issues, such as concerns about the potential for liability, including through citizen suits, in situations where a permitting agency determines there is a functionally equivalent discharge but a permit has not yet been granted.

"[I]t serves no legitimate purpose to subject that system or facility operator to potentially heavy penalties, when it had no notice that it was required to have a permit, it is complying with the new requirement to obtain a permit, and it is awaiting its new permit," FSWA says. "EPA should make it clear that in such a situation, the system or facility operator should not be subject to claims for past or current CWA noncompliance as long as it is meeting the application schedule set forth by the agency and working with the agency to obtain the new permit."

Seeking Additional Clarification

The Federal Water Quality Coalition (FWQC), a similar coalition of industrial companies, municipal entities, agricultural parties, and trade associations, echoes many of FSWA's points in its Jan. 11 comments, supporting the proposed guidance and the additional factor but calling for more clarification from the agency.

While EPA has issued detailed regulations on the content of NPDES applications and permits and developed extensive guidance documents that further specify how the NPDES rules should be implemented, none of those address the functional equivalent situation, FWQC says. And it is far from clear how the existing NPDES rules and guidance should be applied to that situation.

"For example, if the application requires that effluent test results be submitted indicating the levels of various pollutants, where is the point where sampling should be conducted for an addition of pollutants into groundwater? Is it at the point of release into the soil, or somewhere in the aquifer, or at the eventual surface water destination?" FWQC asks.

"Then, when the permitting agency has to evaluate the "reasonable potential" of the discharge to "cause or contribute" to water quality standard violations, how is that evaluation conducted?" the coalition adds.

Given that pollutants can attenuate in the soil and groundwater, and undergo other fate and transport changes, FWQC asks how those changes taken into account in determining whether a particular discharge should receive a permit limit for a specific pollutant and where is the point of compliance once the permit limit is calculated.

"The answers to these questions, for a 'functional equivalent' discharge, are not obvious," FWQC says, recommending that EPA work closely with states, regulated parties, and other stakeholders, to ensure that the permitting of "functional equivalent" discharges takes place in a manner that is efficient, effective and scientifically appropriate.

The National Cattlemen's Beef Association in Jan. 8 comments also backs the inclusion of the design and performance factor in the guidance. "This eighth factor, which accounts for system design, is vitally important for farmers who work hard to manage manure, ensuring that these pollutants are not directly discharged to navigable waters," the group says. -- Lara Beaven (lbeaven@iwpnews.com)

Politico: Trump's EPA launches surprise attack on Biden's climate rules
https://www.politico.com/news/2021/01/12/trump-epa-biden-climate-rules-458280
The rule, finished just a week before the president-elect takes office, would block future limits on greenhouse gases from industrial sources aside from power plants.

By ALEX GUILLÉN

01/12/2021 03:28 PM EST

In a surprise move, the Environmental Protection Agency on Wednesday will unveil a climate rule that will effectively prohibit the future regulation of greenhouse gases from any stationary industry other than power plants.

The rule comes just eight days before the inauguration of President-elect Joe Biden, who has pledged a multitrillion-dollar initiative that would combat climate change by making sharp cuts in the United States' carbon dioxide pollution. The new regulation could hamstring much of that agenda, for example by prohibiting Biden's EPA from setting carbon limits on oil and gas wells or refineries.

The vehicle for the latest EPA action was also surprising: The agency included it in a long-planned Trump administration regulation that had originally been aimed at a much narrower target — easing greenhouse gas limits for coal plants that might be built in the future. It never sought public comment on the proposal to exempt a wide swath of industries from carbon restrictions.

Environmentalists quickly condemned the rule — first reported by POLITICO — as a parting gift to polluters.

"EPA is perverting the Clean Air Act to ensure that no industry other than the power sector ever has to cut its climate pollution," said David Doniger, senior strategic director of the Natural Resources Defense Council's Climate & Clean Energy program.

"This unlawful rule is a transparent attempt to erect roadblocks to protecting public health and the environment for the new administration," said Jay Duffy, an attorney for a group called the Clean Air Task Force.

The EPA did not respond to questions about the rule, including whether it complied with requirements to provide public notice and seek comment on rules.

Under the final rule being being published in Wednesday's Federal Register, any stationary source whose industrywide greenhouse gas emissions make up less than 3 percent of U.S. greenhouse gas pollution will be deemed "necessarily insignificant without consideration of any other factors." That means the source would not qualify for regulation under Section 111(b) of the Clean Air Act, the section that was the primary way the Obama administration regulated greenhouse gases from power plants and other sources.

The 3 percent threshold would appear to exclude every stationary greenhouse gas polluter in the U.S. aside from power plants, which the Obama administration made the subject of its major climate regulation in 2015. The rule does not apply to mobile sources like cars and trucks that are regulated under a separate part of the law.

Duffy noted that EPA never formally proposed any specific percentage threshold for regulation. This raises questions about whether the Trump administration violated laws requiring it to take public comment on rulemakings in its haste to finish the rule before Biden takes office.

EPA last year indicated it would launch a separate rulemaking to answer the question of how much greenhouse gas a source category has to emit. Instead, it appears to have used the coal-plant rule, which had long been in the works, to lock in regulatory language without first issuing a separate proposal for further public comment.

Background: As a sister regulation to the 2015 Clean Power Plan, which placed limits on greenhouse gases from existing power plants, the Obama administration's so-called 111(b) rule set carbon dioxide emissions limits for newly built natural gas and coal power plants.

The Trump EPA's 2018 proposal left in place the natural gas limits, which were widely recognized as achievable, but eased regulations for new coal plants to remove any requirement to use partial carbon capture and storage technologies to reduce emissions. EPA acknowledged at the time that it did not expect the change to create any new coal capacity in the United States, though it argued it could offer incentives for manufacturers to develop and export more advanced coal-burning technologies.

However, the final rule punts on any decision about specific emissions limits for power plants, and instead is entirely concerned with setting the regulatory threshold.

EPA last summer contemplated setting a threshold for greenhouse gas emissions below which an industry could not be subjected to Clean Air Act regulation. That step came when the agency rescinded an Obama-era rule regulating methane emissions from the oil and gas industry.

The threshold: "EPA is basing a decision to apply a threshold of 3 percent on the relative contribution of regulating source categories that contribute significantly to the overall impact of climate change," the final rule reads. Eliminating power plants' emissions would reduce the global mean temperature by 0.1 degrees Fahrenheit in 2100, according to EPA. Lowering the threshold to include oil and gas production emissions would achieve only an additional temperature reduction one-fifth of that.

The 3 percent threshold is a "natural breakpoint" since other individual industries represent relatively small slices of the emissions pie, EPA wrote in the final rule.

Power plants make up 27 percent of total U.S. greenhouse gas emissions, according to EPA. Setting the threshold at 3 percent effectively cuts off all other industries from regulation. The next three biggest categories — oil and gas production, refineries and industrial boilers — fall between 2.5 and 3 percent, the agency says. Landfills and iron

and steel manufacturing each represent 1 percent to 1.5 percent, though methane emissions from landfills have been regulated under this part of the law since 1996.

Power plants make up 43 percent of stationary source emissions. Lowering the threshold to 1.5 percent would net coverage for only 56 percent of stationary emissions, too small a change to justify regulation, EPA argued.

WSJ: EPA Raises Barriers to Climate-Change Rules

https://www.wsj.com/articles/epa-raises-barriers-to-climate-change-rules-11610484987

The rule sets new criteria for what is considered a significant contributor of greenhouse-gas emissions

By Timothy Puko

Jan. 12, 2021 3:56 pm ET

WASHINGTON—The Environmental Protection Agency is creating higher barriers for regulating the emissions that contribute to climate change, setting new rules that effectively block the federal government from imposing new restrictions on several heavy industries.

The agency, which first introduced a proposal to create the higher bar in August, packaged these new standards in a rule making it issued Tuesday.

The rule, to be published in the Federal Register Wednesday, sets new criteria for what is considered a significant contributor of greenhouse-gas emissions.

In the rule the agency says that determination is required by law and finds that oil and gas producers, refiners, steelmakers and other heavy industries don't meet the criteria, prohibiting the EPA from regulating their emissions under the Clean Air Act.

Tuesday's action may not have staying power, however. President-elect Joe Biden's team has announced plans to freeze and potentially undo any new regulations, such as this one, that are still pending when it takes power next week.

The Biden transition team didn't immediately respond to a request for comment. Mr. Biden, however, has criticized the Trump administration for rolling back environmental regulations aimed at arresting climate change.

President Trump has pushed for ways to check expanding environmental regulations, saying they hurt U.S. businesses like manufacturers and energy producers.

The EPA said power plants can still be regulated on their emissions, but that it sees a distinction between electric power and other heavy industries. Power plants produce about a quarter of the country's greenhouse-gas emission, and the next-largest producer is the oil-and-gas industry, at just less than 3%, the agency said in the rule. It then sets a threshold at 3% for what industries are considered significant contributors.

"The first natural breakpoint is between (power plants) and all other source categories. (Power plants) stand out as by far the largest stationary source of the U.S. GHG emissions," the agency says in the new rule. "These criteria help ensure that the EPA's decision-making is well-reasoned and consistent."

The conclusion is absurd, said the Clean Air Task Force, an environmental group that advocates for greenhouse-gas emissions limits. It said it expects the Biden administration to undo the rule, and that it may violate rules on public notice.

The agency proposed the standards in new rules about regulating methane emissions in the oil-and-gas industry, and then finalized them in a package about rules for power plants.

"This unlawful rule is a transparent attempt to erect roadblocks to protecting public health and the environment for the new administration," Jay Duffy, an attorney for the organization, said in a statement.

An EPA spokesman didn't immediately return a request for comment. The agency press staff didn't announce the rule making.

The rule showed up Tuesday in an online notice that it would be published Wednesday in the Federal Register. It will be effective 60 days later, the rule says.

That is one of several vulnerabilities that may prevent it from having a lasting effect, the analysis firm ClearView Energy Partners LLC said in a note. Mr. Biden's team has said it intends to freeze rules like this still pending when it takes power. There is also a legal window for opponents to request an administrative reconsideration, which will stretch weeks into Mr. Biden's administration, giving it another option to suspend the rule.

Write to Timothy Puko at tim.puko@wsj.com

Politico: Trump's EPA team overrules career scientists on toxic chemical
https://www.politico.com/news/2021/01/13/trump-epa-toxic-chemical-458962

Changes to the safety assessment for a major cause of water pollution are the administration's latest "landmine" for Joe Biden's incoming appointees, one Democratic aide said.

By ANNIE SNIDER

01/13/2021 01:25 PM EST

Political officials at EPA have overruled the agency's career scientists to weaken a major health assessment for a toxic chemical contaminating the drinking water of an estimated 860,000 Americans, according to four sources with knowledge of the changes.

The changes to the safety assessment for the chemical PFBS, part of a class of "forever chemicals" called PFAS, is the latest example of the Trump administration's tailoring of science to align with its political agenda, and another in a series of eleventh-hour steps the administration has taken to hamstring President-elect Joe Biden's ability to support aggressive environmental regulations.

"They're just trying to lay as many landmines as possible," said a Democratic congressional aide with knowledge of the changes. "Every single thing that they're doing ends up being a landmine for whoever comes next. It's going to take a lot of time to unravel, which sort of takes away from the ability to do anything proactive."

An EPA spokeswoman did not respond to a request for comment on the changes, but defended its effort to tap scientists from a different part of the agency to rewrite the rule.

PFBS is a replacement for a related chemical, PFOS, that was used for decades in Scotchguard and military firefighting foam before being phased out in the mid-2000s. PFBS has been in military firefighting foam, carpeting

and food packaging, but independent scientists say it may not be much safer than the toxin it replaced. It has been linked with with thyroid, kidney and reproductive problems at very low levels of exposure.

While the new assessment is a science document, not a regulatory one, the changes in question open the door for state and federal regulators to potentially set less stringent cleanup standards, drinking water limits and other standards.

The broader class of PFAS, of which PFOS is a part, has been used in everything from stain-resistant carpeting to Teflon to microwave popcorn bags, and are linked with kidney and testicular cancer, immune effects and other health ailments. The chemicals contaminate the drinking water supplies of an estimated 200 million Americans, according to an analysis by the nonprofit Environmental Working Group.

Trump administration officials at EPA have vowed to aggressively address PFAS, touting a multi-pronged PFAS Action Plan. But they have fought efforts by lawmakers to accelerate work on a federal drinking water limit for the chemicals, and in 2018 POLITICO reported that White House officials sought to block a CDC assessment finding they are dangerous at much lower levels of exposure than EPA said was safe, calling it "a public relations nightmare."

The PFBS assessment has been in the works for more than three years, and has been a particular concern for the Defense Department, which faces massive cleanup liability.

The draft assessment EPA released for public comment in November 2018 took the standard approach of providing a single number describing how toxic the chemical is to humans, called a "reference dose." Regulators can then use that number to calculate a safety limit for different populations — for instance, for pregnant women or people with compromised immune systems.

But the final assessment sent to the White House for review Monday replaces that single reference dose value with a range of values, the sources said, a change made by staffers in the agency's pesticides office at the direction of political officials — not the career scientists at EPA who specialize in assessing the human health risks of chemicals.

EPA spokeswoman Molly Bock defended this reassignment, saying that it is "routine" to consult with other parts of the agency.

"This collaboration is important as other program offices have information and expertise that can improve the scientific quality of the work product under review. This aligns with EPA's PFAS Action Plan, which is the first multi-media, multi-program office plan to address an emerging contaminant of concern," she said.

But the alterations were so alarming that several of the career EPA scientists who spent years working on the study have asked that their names be removed from the document, two of the sources said.

Environmental advocates say the range approach would allow industry and state and local officials to "cherry-pick" the number they like best, regardless of whether it is sufficiently protective.

"The dream of industry has always been a range of values so that you really can choose anywhere within that range," said Betsy Southerland, a former top EPA scientist who led the agency's work on the health assessment for two other PFAS chemicals in 2016

The new range of reference doses in the final assessment includes slightly weaker values than EPA forward put forward in its draft assessment in November 2018, two of the sources said. But the most alarming part isn't the numbers themselves, they said, since the conclusion is still that PFBS is dangerous at very low levels of exposure. Rather, it's the fact that political officials upended the scientific process to arrive at them.

"It's not orders of magnitudes, but that's irrelevant. How much does it matter if you get one drop or two drops of cyanide?" said the source, a senior EPA scientist.

In a related move late last week, the Trump administration threw up a new roadblock to environmental health assessments with a new mandate from the powerful Office of Management and Budget, which resides at the White House.

On Friday, OMB ordered that the agency's gold-standard health assessments go through White House review – a process that environmental and public health advocates say inserts political interference into documents that are meant to be purely scientific and have already been peer reviewed.

The order, sent from OMB to EPA Administrator Andrew Wheeler in a memo reviewed by POLITICO, effectively reinstates a process that was in place under the George W. Bush administration, which a government watchdog found "limits the credibility" of assessments from EPA's premiere risk assessment program, the Integrated Risk Information System. The IRIS program has for years been a top target for the chemicals industry, Republicans on Capitol Hill and Trump's EPA research chief, David Dunlap, in his former role as a chemicals expert at Koch Industries.

The PFBS assessment is the first to go through the newly-mandated White House review, and the sources said they expect it to be perfunctory, aimed primarily at establishing a precedent. The assessment could be finalized as soon as Wednesday, they said.

"There's no need for there to be a political review of these documents," said Genna Reed with the Union of Concerned Scientists. "Largely it is an opportunity for political officials to interfere with the information, to weaken the science, and to play up uncertainty."

OMB spokesman Edie Heipel defended the move, saying there is "nothing controversial about ensuring good science unless you are worried that your work won't stand up to scrutiny from other scientists across the government."

These latest moves come after EPA Administrator Andrew Wheeler last week finalized a sweeping regulation limiting the agency's ability to rely on scientific studies that don't make all of their underlying data public – a requirement that public health advocates say will make it harder for the agency to use research on the health effects of toxic chemicals on humans.

To be sure, the incoming Biden administration is expected to attempt to reverse many of these moves. Environmental groups have already filed suit seeking to overturn last week's scientific transparency rule. But critics of the move say it will take some time to unwind, leaving health and safety gaps in the meantime.

KSL, Salt Lake City: What a Biden presidency might mean for outdoors, environment issues in Utah?

https://www.ksl.com/article/50086995/what-a-biden-presidency-might-mean-for-outdoors-environment-issues-in-utah

By Carter Williams, KSL.com | Posted – Jan. 13, 2021 at 12:55 p.m.

SALT LAKE CITY — President-elect Joe Biden will officially take office next week, and with that comes expected shifts in how the U.S. deals with environmental and outdoors issues.

For starters, Biden has pledged that one of his first acts in office will be to move the country back into the Paris Climate Agreement — an accord with nearly 200 other countries pledging to reduce carbon emissions in an effort to slow down climate change.

It's an agreement the U.S. joined under President Barack Obama in 2016 and that President Donald Trump announced the U.S would pull out of in 2017; the U.S. formally did so in November of last year.

But that's just the beginning. When it comes to environmental and outdoors issues, there could be a complete overhaul in the attitude. Here's a look at how a change in the presidency could affect the issue.

National monuments

Let's start with one of the most Utah-specific issues.

It was only a little over three years ago that Trump arrived in Utah and signed an executive order that significantly slashed the size of Bears Ears National Monument — a monument that was designated at the tail end of the Obama presidency — and Grand Staircase-Escalante National Monument.

It's possible both southern Utah monuments will be restored to their original designation under Biden, especially considering it's a measure that can be done through executive order. Navajo Nation President Jonathan Nez and other tribal leaders are among those pushing for Biden to return Bears Ears to its original size, KNAU in Flagstaff, Arizona, reported last month.

During an economic summit forum Tuesday, Sen. Mitt Romney named both national monuments as examples of Trump executive orders he expected Biden would reverse once his presidency begins.

Oil and gas leasing

Another key Utah issue is oil and gas leasing on federally owned land. Biden's plan would call for an end to it, which was most remembered by his campaign's "no new fracking" message throughout 2020.

So what would that mean for Utah? Quite a bit because federal government agencies control land decisions in nearly two-thirds of the state. Only Nevada has a higher percentage of federal land ownership.

Gordon Larsen, who serves as the governor's senior advisor for federal affairs, told the Deseret News this week that Utah would get an unfair shake because so much of the land is controlled by the federal government.

"It would be terribly unfair to place the burden of energy reductions on fragile Western communities just because they happen to be near federal lands," he said.

A study conducted by the University of Wyoming at the request of the Wyoming Energy Authority found that a ban on new oil and gas leasing would result in the loss of 3,232 jobs on average over the next four years and a $1.4 billion hit on gross domestic product over that time. It also estimated $664 million in lost wages in $255 million in tax revenue to the state over that time.

For reference, the state's overall tax and fees revenue heading into the 2021 legislative session was listed at $13.3 billion. State officials say there are currently over 6,000 wells that are either owned by tribes or on private or state land, which the policy change wouldn't be able to touch.

Environmentalists, on the other hand, argue that it's a large contributor to greenhouse gasses that lead to the overall warming of the Earth and climate change. The nonprofit conservation group The Wilderness Society, for example, argued in a 2020 report that oil and gas leasing granted on public lands from the Trump administration resulted in somewhere between 1 and 5.95 billion metric tonnes of carbon dioxide over a three-year span.

There were an estimated 43.1 billion tonnes of carbon dioxide emitted into the atmosphere globally in 2019, according to data collected by TheWorldCounts.

A study in Nature magazine also published last year found that the amount of methane in the atmosphere — a gas that is released during the natural gas and oil extradition process — was 25% to 40% higher than previously thought, and was thus contributing to more warming as well.

The authors of the study pointed out that it did at least pinpoint where additional methane is coming from and that could help in taking actions to limit it.

'Build Back Better'

So, if Biden is moving away from old energy practices, how will the U.S. and Utah get energy?

Biden's campaign focused heavily on changes in energy infrastructure with a goal of net-zero emissions "no later than 2050." It included a "Build Back Better" plan that calls for "creating the jobs we need to build a modern, sustainable infrastructure now and deliver an equitable clean energy future."

The plan calls for a move to a carbon pollution-free power sector by 2035, as well as plugging abandoned oil and gas wells and reclaiming energy mines. That's not a completely far-fetched goal; a report by the University of California-Berkeley released in 2020 found that 90% of all U.S. electricity could be supplied by carbon-free sources by 2035 at no extra costs to consumers.

A good chunk of Biden's plan called for building on nuclear, hydropower, geothermal, wind and solar energy sectors that already exist. Utah has a leg up in the geothermal, wind and solar energy sectors. For example, Vivint Solar lists the Beehive State as the eighth-best state for installed solar capacity.

The 100-megawatt Hunter Solar farm in Emery County is another project of D.E. Shaw Renewable Investments in conjunction with Rocky Mountain Power. A similar agreement has been reached for an 80-megawatt plant in Tooele County.

The 100-megawatt Hunter Solar farm in Emery County is another project of D.E. Shaw Renewable Investments in conjunction with Rocky Mountain Power. A similar agreement has been reached for an 80-megawatt plant in Tooele County. (Photo: D.E. Shaw Renewable Investments, File)

Even without Biden, clean energy innovation was expected in the foreseeable future. The Clean Economy Jobs and Innovations act, which ex-Utah Rep. Ben McAdams championed, was signed into law when Trump approved a $1.4 trillion omnibus spending bill in December. McAdams tweeted that it will "support Utah's clean energy economy and jobs while building a healthier environment."

Meanwhile, Biden also called for an Advanced Research Project Agency that would be tasked with figuring out advancements in these fields, such as a grid-scale energy storage system one-tenth the cost of lithium-ion batteries and smaller, safer, more efficient and cheaper nuclear reactors. All of these clean energy measures, he contended, would help create new energy jobs.

Nevertheless, the policies weren't immediately clear as to what jobs it would bring Utah in the future. That portion of the energy plan remains wait-and-see.

Climate justice

Other climate-related plans brought up during the Biden campaign included overhauling the Environmental Protection Agency and establishing a new branch in the Department of Justice that would oversee environmental and climate protection.

Biden said that the EPA and new Department of Justice branch would be instructed to pursue environmental violations "to the fullest extent permitted by law and, when needed, seek additional legislation to hold corporate executives personally accountable – including jail time where merited."

Wolves and sage grouse

Finally, there were a pair of federal wildlife decisions made at the end of 2020 that affected Utah that could be overturned. In fact, one all but certain to be.

First, the Department of the Interior announced in October that it would remove gray wolves from the endangered species list. In Utah, this automatically triggered the Division of Wildlife's plan for gray wolves for the moment wolves were no longer federally protected due to recovery.

It's not exactly clear how Biden's administration will handle gray wolves, but it's clear that it's an issue that he will be asked by wildlife groups to address. Several wildlife organizations have already called on Biden to reverse the

federal decision on the species, arguing that it was removed prematurely and done without proper scientific peer review.

A few weeks after the wolf delisting, the Trump administration announced plans to roll back protections for the sage grouse across a few states, including Utah. This measure is still playing out and not finalized. In fact, the Associated Press reported Tuesday that the Bureau of Land Management completed a review of its plans this week and it's unlikely that it would be able to ease court-approved sage grouse habitat restrictions by the end of Trump's term.

Greta Anderson, the deputy director of the Western Watershed Project, told the news agency that she doesn't believe the federal agency will continue to pursue the plan once Biden is sworn in next week.

"It's a nothing burger. It's a parting shot on the way out the door," she told the AP. "We don't expect the Biden administration to defend these terrible plans."

Politico: AROUND THE AGENCIES

https://www.politico.com/newsletters/morning-energy/2021/01/13/trump-epa-weakens-pfas-protections-792742

Morning Energy: January 13

TRUMP EYES HEFTY CUTS TO EPA: The Trump administration is attempting to claw back more than $800 million from EPA as part of a package of spending cuts that will be sent to Congress this week. Trump promised to introduce the recission package last month after raising objections to the year-end funding and coronavirus relief package. It has zero chance of gaining traction on Capitol Hill, but even just the request typically causes the funds to be frozen by OMB for 45 days.

The EPA cuts would slice more than $500 million from EPA's grants to states, more than $200 million from its research and development office, $80 million from the Diesel Emissions Reduction Program, $9 million from the agency's environmental justice work and almost all of the funding tagged for environmental education, according to a person familiar with the request.

EPA BLOCKS FUTURE CLIMATE RULES: Just a week before President-elect Joe Biden takes office, EPA will publish a rule today to effectively prohibit the future regulation of greenhouse gases from any stationary industry other than power plants, POLITICO's Alex Guillén reports.

Any stationary source whose industry-wide emissions make up less than 3 percent of U.S. greenhouse gas pollution will be deemed "necessarily insignificant without consideration of any other factors" under the rule, meaning it would not qualify for regulation under Section 111(b) of the Clean Air Act. That section was primarily how the Obama administration regulated greenhouse gases from power plants and other sources. The 3 percent threshold would appear to exclude every stationary greenhouse gas polluter in the U.S. aside from power plants.

Surprise! The vehicle for the rule was included in a long-planned Trump administration regulation that had originally been aimed at a much narrower target: Easing greenhouse gas limits for coal plants that might be built in the future. EPA never sought public comment on the proposal to exempt a wide swath of industries from carbon restrictions, and did not respond to questions about the rule, including whether it complied with requirements to provide public notice and seek comment on rules.

NHTSA DELAYS PENALTY HIKE FOR AUTOMAKERS: The National Highway Traffic Safety Administration says that a 150 percent jump in civil penalties for automakers that don't meet fuel economy requirements won't take effect until model year 2022, a move that could save manufacturers hundreds of millions of

dollars. A panel of three Trump-appointed judges in August overturned NHTSA's reversal of the Obama-era increase in penalties from $5.50 per tenth of a mile per gallon to $14, reinstating the higher fines.

In an interim final rule to be published on Thursday, NHTSA said it would be "unfair and improper" to apply it to the 2021 model year, for which automakers have already locked in plans. The rule doesn't say exactly how much that will save automakers, but the industry warned that the original increase would cost up to $1 billion a year. Though manufacturers applauded the decision, critics balked, with Union of Concerned Scientists analyst Dave Cooke calling it "some last minute favors" for industry. NHTSA will take 10 days of public comments, though it argues that doing so is "unnecessary."

YAZOO SUIT DROPS: Environmental groups filed suit against EPA Tuesday, challenging the Trump administration's approval of a Mississippi flood project that was vetoed by President George W. Bush's administration in 2008. The suit, brought by Earthjustice on behalf of American Rivers, the National Audubon Society, the Sierra Club and Healthy Gulf in U.S. District Court for the District of Columbia, argues the agency violated the Clean Water Act and the Administrative Procedures Act by advancing the project that would drain tens of thousands of acres of wetlands.

National Law Review: Asbestos Reporting and Regulation to be a TSCA Focal Point for EPA in 2021
https://www.natlawreview.com/article/asbestos-reporting-and-regulation-to-be-tsca-focal-point-epa-2021
Wednesday, January 13, 2021

A flurry of asbestos-related activity in the last weeks of 2020 will require the United States Environmental Protection Agency (EPA) to devote significant regulatory attention to asbestos in 2021. The incoming Biden Administration will need to address these Toxic Substances Control Act (TSCA) developments, and the scope of that response will determine whether regulatory implications extend beyond asbestos to other chemical substances.

Background
Since 2016, the EPA has analyzed asbestos under the TSCA risk evaluation process. Legal challenges have plagued the process, with several groups accusing EPA of conducting too narrow of an analysis based on too little information. Those challenges, coupled with significant administrative delays wrought by COVID-19, left the scope and status of the asbestos risk evaluation—which had been due in June 2020—outstanding for most of 2020.

Though EPA released the first part of its final risk evaluation on December 30, 2020, a federal district court decision issued just 8 days earlier could eventually force EPA to go back to the drawing board. EPA will need to decide whether to appeal the ruling, a decision the Biden EPA would need to support given that it is unlikely the Trump EPA could brief the appeal in the Ninth Circuit Court of Appeals before the administration change.

Unless successfully appealed, the district court's decision will require EPA to amend its TSCA Chemical Data Reporting (CDR) Rule to require additional reporting from companies using asbestos and raw materials that may be contaminated with asbestos, such as talc. The data gathered through the additional reporting may require EPA to revise its conclusions or conduct yet another evaluation. At the same time, EPA must move forward in 2021 with developing regulations addressing the "unreasonable risks" it has already identified for current uses of chrysotile asbestos and begin its risk evaluation for "legacy" uses of asbestos (those that are no longer "ongoing").

EPA's attention on asbestos in 2021 could have significant consequences for companies, particularly those in the cosmetic industry and other industries utilizing talc and other raw materials that may be contaminated with asbestos.

EPA Ordered to Close CDR Rule "Loopholes"

On December 22, 2020, a Northern District of California judge ordered EPA to close asbestos reporting "loopholes" in its CDR Rule to gather additional information about current uses of asbestos. In its order, the Court held that EPA "arbitrarily and capriciously" denied two TSCA Section 21 petitions filed by NGOs and a coalition of states seeking asbestos-related amendments to the Rule, leaving the Agency with insufficient CDR reporting information on which to base its TSCA asbestos risk evaluation.

Specifically, the Court ordered EPA to make significant changes to its CDR Rule with respect to asbestos reporting to close the following "loopholes":

Exemption for "asbestos-containing articles." The Court observed that there was significant evidence that EPA had omitted many potential uses of asbestos from the scope of its TSCA risk evaluation, and that the uses EPA did analyze "appear to be only the tip of the iceberg." In the Court's view, EPA will have more fulsome information about potential uses of asbestos for its risk evaluation if "asbestos-containing articles" were removed from the current CDR exemption for substances imported as part of an article.

Exemption for "impurities." Under the current CDR Rule, the manufacture or import of asbestos as an impurity—a substance unintentionally present with another substance, mixture, or article and which has no separate commercial purpose—is exempt from reporting. EPA had argued that reporting of asbestos impurities was impractical and would impose a testing requirement on companies. The Court rejected EPA's position, observing that companies might have access to third party testing information or could use "their considerable resources" to obtain testing for asbestos impurities.

Exemption for "processors." Plaintiffs had asked EPA to expand the scope of asbestos CDR reporting to "processors" of asbestos-containing articles because many importers would be unable to provide use and exposure information in the sole possession of the companies using those products. The Court agreed that processors should be required to report, noting that "importers will often be relatively uninformed about downstream uses of their products."

Asbestos Risk Evaluation
Just over one week after the decision in the CDR litigation, on December 30, 2020, EPA released Part 1 of its final asbestos risk evaluation under Section 6 of TSCA. Part 1 evaluated only ongoing uses of chrysotile asbestos. EPA's final conclusions remained unchanged from its draft conclusions, with the Agency determining that the following "conditions of use" pose an unreasonable risk to human health:

Occupational Uses
Processing and industrial use of chrysotile asbestos diaphragms in the chlor-alkali industry

Processing and industrial use of chrysotile asbestos-containing sheet gaskets in chemical production

Industrial use and disposal of chrysotile asbestos-containing brake blocks in the oil industry

Commercial use and disposal of aftermarket automotive chrysotile asbestos-containing brakes/linings

Commercial use and disposal of other chrysotile asbestos-containing vehicle friction products

Commercial use and disposal of other asbestos-containing gaskets

Consumer Uses
Aftermarket automotive chrysotile asbestos-containing brakes/linings

Other chrysotile asbestos-containing gaskets

EPA also concluded that the following conditions of use do not pose an unreasonable risk to human health:

Import of chrysotile asbestos and chrysotile asbestos-containing products

Distribution of chrysotile asbestos-containing products

Use of chrysotile asbestos-containing brakes for a specialized, large NASA transport plane

Disposal of chrysotile asbestos-containing sheet gaskets processed and/or used in the industrial setting and asbestos-containing brakes for a specialized, large NASA transport plane

TSCA requires EPA to promulgate final risk management rules addressing the unreasonable risks it has identified by December 30, 2022, unless it successfully invokes an extension under TSCA.

EPA also announced that it expects to release the scoping document for Part 2 of its asbestos risk evaluation in mid-2021. Part 2 will address "legacy" uses of asbestos and associated disposals (i.e., those that are no longer "ongoing," such as asbestos insulation). Although EPA initially chose to exclude these uses from its analysis, the Ninth Circuit Court of Appeals ordered EPA to include them following a successful legal challenge lodged by consumer groups in Safer Chemicals Healthy Families, et al. v. EPA, No. 17-72260 (9th Cir. Nov. 14, 2019).

Considerations for Companies

Companies—particularly those in the cosmetic industry and other industries using talc or other raw materials which can be contaminated with low levels of asbestos—should pay close attention to EPA's activities in 2021.

First, EPA's amendments to the CDR Rule will likely require more companies to report than the current rule. Due to the long-standing CDR exemptions for processors, articles, and impurities, many of these companies may also be new to the reporting process, the complexity of which can cause significant compliance headaches even for those well versed with the program. How EPA approaches expanding the CDR Rule for asbestos should also be monitored for insights into ways the Agency could expand the program for other "chemicals of concern" in future CDR reporting cycles.

Second, EPA may choose to include potential risks from asbestos present as an "impurity" in other substances or articles in Part 2 of its asbestos risk evaluation. Although EPA has not yet signaled that it will do so—instead only committing to an analysis of legacy uses and associated disposals as ordered by the Ninth Circuit—it has the flexibility to expand the scope of the risk evaluation if it chooses. As the CDR litigation and current asbestos personal injury litigation trends make clear, consumer groups and plaintiffs are focused on products that contain asbestos-contaminated talc and are likely to pressure EPA to analyze those uses and regulate (or ban) them. If EPA chooses to exclude de minimis and impurity uses from Part 2 of its risk evaluation, it may face further legal challenges from interested groups.

Finally, the Northern District of California's ruling in the CDR litigation noted that EPA's TSCA risk evaluation for asbestos suffered from information gaps created by the "loopholes" in the CDR Rule. Even if EPA amends the CDR Rule as directed by the Court, reporting data will not be immediately available. Whether EPA will revisit either Part 1 or Part 2 of its asbestos risk evaluation when that data is available—or whether it will be compelled to do so by consumer group challenges—remains to be seen.

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MLIVE: Judge plans to rule on Flint water crisis settlement in next 8 days
Updated 3:32 PM; Today 3:32 PM

By Ron Fonger | rfonger1@mlive.com
FLINT, MI -- A U.S. District Court judge says she intends to rule by Jan. 21 on whether to grant preliminary approval of a historic settlement of civil lawsuits related to the Flint water crisis.

In a brief virtual federal court hearing Wednesday, Jan. 13, Judge Judith Levy told attorneys involved in the cases that said she intends to file her decision on the $641-million settlement in the next eight days.

Levy had initially hoped to issue her ruling by this week but said Wednesday she was not yet prepared to do so.

"Please bear with me. There's a lot of material to be covered and reviewed and considered," the judge said.

Levy is weighing whether to grant preliminary approval of the settlement reached through mediation by the state of Michigan and attorneys for Flint residents, who have filed more than 100 lawsuits in state and federal courts.

She has said she is reviewing the arrangement to insure it is fair, adequate, reasonable, and is an arms-length transaction.

The city of Flint, McLaren Regional Medical Center and Rowe Professional Services joined in the settlement agreement while other defendants, including the U.S. Environmental Protection Agency, Flint water consultants, and Hurley Medical Center have opted to continue to litigate in cases in which they have been named as defendants.

The proposed deal would dismiss the state, city, Rowe and McLaren as well as their employees from the lawsuits. It calls for nearly 80 percent of the settlement, which state officials have said is likely the largest in Michigan history, to be paid to children who were younger than 18 when they were first exposed to Flint River water, which contained elevated levels of lead, bacteria and chlorination byproducts in 2014 and 2015.

If Levy gives the settlement preliminary approval, claims registration and objections to the agreement can begin to be filed with the court.

Best, R.

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